(1) (3) C.F. (100)

Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

W. P. No...3965... Of 2004

PETITIONER

P.R. No. 3963/04
Presented by Shri R.S. Patel
dated 18/10/04

Devendra Kumar Markam S/o late shri Gopal Ram Markam by caste Gond, aged about 19 years, resident of village & Post-Pond, tahsil-Gurur, Dist. Durg (C.G.)

VRSUS

RESPONDENTS.

1. State of Chhattisgarh through secretary of Education department D.K.S.Bhawan Raipur (C.G.)
2. The Collector, North Bastar Kanker, Dist. North Bastar-Kanker (C.G.)
3. District Education Officer, North Bastar-Kanker, Dist. North Bastar-Kanker (C.G.)
4. Deputy Director of public Instruction, Education, Dist. Kanker (C.G.)
5. The State of Madhya Pradesh through Secretary of Education Department, Bhopal, Bhopal (M.P.)

18.10.04

Power Counsel for Respt. No. 5 State of M.P. is not appointed.
18.10.04

WRIT PETITION UNDER ARTICLE 226/227 OF THE COUNSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS, PROHIBITION, CERTIORARI ETC. OR ANY OTHER DIRECTION OR ORDER TO DO JUSTICE IN THE MATTER.

AFR

(60)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 3965 of 2004

Petitioner : Devendra Kumar Markam

Versus

Respondent : State of Chhattisgarh & others

Shri R. S. Patel, Advocate for the petitioner.

Shri Arun Sao, Govt. Advocate for the respondents No. 1 to 4.

None for the respondent No.5.

ORDER

(22nd November, 2006)

1. The father of the petitioner namely Shri Gopal Singh Markam was working as Assistant Teacher in primary school, village- Lohattar, tahsil- Bhanupratappur, district- Kanker, when he died on 21.9.1996 in harness. The mother of the petitioner namely Smt. Sumitra Bai Markam moved an application for compassionate appointment on 3.10.1996 (Annexure P/5) and thereafter representations 23.1.1998 (Annexure P/6), 6.9.1999 (Annexure P/7) and other representations were made. She was not granted compassionate appointment and she did not challenge the same.

2. Later on, as the mother of the petitioner became over age, the petitioner, being eldest major son, made an application for grant of compassionate appointment on 10.4.2004 (Annexure P/11). The petitioner has filed this petition seeking a direction to the respondents to grant compassionate appointment.

3. There is delay and laches on the part of the petitioner in applying for grant of compassionate appointment as the father of the petitioner died on 21.9.1996 and the petitioner has applied for grant of

compassionate appointment on 10.4.2004, when he attained the age of majority, to be appointed in government institutions. It is well settled principle that a belated petition should not be entertained if the petitioner has failed to explain inordinate delay. During this period the place, if any, which was vacant, might have been filled up and several persons must have settled their rights. It is well settled that the appointment on compassionate ground is not a method of recruitment, but, is a facility to provide for immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employee from destitution. In other words, the object of compassionate appointment is to enable penurious family to tide over the sudden financial crisis and is not to provide employment. It is also well settled that mere death of the employee does not entitle his family to claim compassionate appointment if the family members could sustain themselves financially from other sources of income.

4. In **Haryana State Electricity Board and another Vs. Hakim Singh** { (1997) 8 SCC 85 } an employee died in harness leaving behind him a minor son. As per the compassionate appointment scheme, three years' limitation after attaining majority was prescribed. The minor son made an application beyond the stipulated time. The High Court's interpretation of the phrase "three years time for making such request in case of minors" as "in case of minors the period of three years would be applicable from the date he becomes major" was set aside by the Supreme Court on challenge. The Supreme Court held that if the family members of the deceased employee can manage for 14 years after his death, one of his legal heirs cannot put forward a claim as though it is line of succession by virtue of a right of inheritance. The whole object of any compassionate appointment

scheme is to give succor to the family to tide over the sudden financial crisis befallen the dependents on account of the untimely demise of its sole earning member.

5. The Supreme Court in the case of **State of J & K and others Vs. Sajad Ahmd Mir** { (2006) 5 S.C.C. 766 }, in para 11 has held as under :-

> "11.....it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution."

6. As a result, for the reasons made herein above and the dicta laid down by the Supreme Court, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur